



April 26, 2002

Ms. Carolyn M. Hanahan  
Feldman & Rogers, L.L.P.  
5718 Westheimer, Suite 1200  
Houston, Texas 77057

OR2002-2146

Dear Ms. Hanahan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161884.

The Klein Independent School District (the "district"), which you represent, received a request for investigating officers' suicide reports for 2001 and statistics on the number of attempted and completed suicides in the area. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.114 of the Government Code. We note that your request for a decision does not address the portion of the request seeking statistical information. We assume that the district has released this information to the extent that it exists. Otherwise, the Act does not require the district to compile statistics or create a new document in response to this request. *See* Open Records Decision No. 452 (1986). We have considered the exceptions you claim and have reviewed the submitted information, which consists of law enforcement records of the district's police department..

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Section 58.007 makes certain juvenile law enforcement records confidential. Section 51.04(a) of the Family Code states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving a child engaging in delinquent conduct or conduct indicating the need for supervision. After reviewing the submitted information, we conclude that offense

report numbers 010439, 010334, and 010361 constitute the types of records that section 58.007 covers. Thus, incident report numbers 010439, 010334, and 010361 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We now address your claim under section 552.108 for the remaining report, which pertains to a completed suicide. Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

....

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

.....

Gov't Code § 552.108(a)(2). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You explain that the information related to a completed suicide is information that deals with the detection, investigation, or prosecution of crime in relation to an investigation that did not result in conviction or deferred adjudication. Based on your representation, we conclude that the district may withhold most of the offense report number 010331 under section 552.108.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Basic information includes the identification and description of the complainant and the location of the offense. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177. Thus, you may not withhold under section 552.108 the types of information in this report that are considered to be front page offense report information.

Finally, we address your contention in relation to the remaining information that certain information is confidential under the Family Educational Rights and Privacy Act of 1974 ("FERPA") and section 552.114 of the Government Code. The Family Educational Rights

and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student or one or both of the student's parents." Open Records Decision Nos. 332 (1982), 206 (1978). However, records maintained by a law enforcement unit of an educational agency or institution that were created by that law enforcement unit for purposes of law enforcement are excluded from the definition of "education records" under FERPA. *See* 20 U.S.C. § 1232g(a)(4)(ii). Offense report number 010331 appears to have been created by the district's law enforcement unit for purposes of law enforcement. Although you state that this information may also be maintained by the district in student education records, you acknowledge that the report itself is a law enforcement record. Therefore, we conclude that FERPA does not apply to this record and student identifying information contained therein is thus not subject to FERPA's confidentiality requirements and may not be withheld on that basis.

In summary, offense report numbers 010439, 010334, and 010361 must be withheld in their entirety under section 552.101 of the Government Code. With the exception of basic

information, you may withhold offense report number 010331 under section 552.108. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

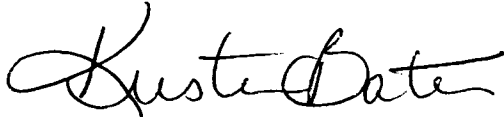
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 161884

Enc: Submitted documents

c: Mr. Mike Halligan  
Executive Director  
Texas Mental Health Consumers  
7701 North Lamar, Suite 500  
Austin, Texas 78752  
(w/o enclosures)